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## **MINORS AS SUBJECTS OF LAW: ASPECTS OF GENERAL THEORETICAL JURISPRUDENCE**

The article deals with the problem of understanding the concept of "legal entity" in terms of theoretical jurisprudence. Historical aspects of development of approaches related to legal entity are pointed out. Particular attention is paid to minors as a special subject.

It is noted that minors act as subjects of law and their status should be in the center of a legal system in a legal and social state. However, minors are special subjects, so there is a scientific need to research specific features of the legal status of such category of children. Everyone in society enjoys a social status depending on many factors including the rate of education, financial welfare, political status, etc. A human being lives in accordance with law and cannot be above the law, its social status eventually becomes legal, and, therefore, each person acts as the subject of law.

It is proved that the development of modern legal science establishes a new scientific approach to a legal system, recognizing "anthropologization" of law as a new scientific approach that provides a central, basic human status in law and requires appropriate study of specific characteristics and properties of an individual and their influence on law and the state.

Theoretical and legal aspects of the legal status of a man are one of the actual issues that are being developed by modern legal science. Since the birth a living being is endowed with legal capacity as the ability to have rights. Therefore, we can state that the legal status of a person is fixed since birth.

It is determined that the main feature of minors is that they cannot fully exercise legal relations. This is due to the lack of full capacity, since they enter the most important legal relationships not personally, but through parents or persons who replace them. Thus, we can state that the first feature of minors as a legal entity is the lack of full capacity.

International standards in the field of minors' rights allocate general and special rules mentioned in the Convention on the Rights of the Child, which widely sets the rights of minors that can be divided into the following types: 1. The rights of a minor as a human being; 2. The rights of a minor as a child; 3. Specific rights of minors. Thus, in the context of protecting and securing the rights, minors enjoy the same and perhaps broader rights than those of adult entities.

As far as the issue of duties concerns, we cannot put equal sign between minors and adults, because state and law, in view of their immaturity, lack of complete socialization, experience and knowledge, defines certain category of persons as such that are capable to take responsibility on soft categories of offenses, usually heavy and especially hard crimes together with establishing peculiarities of sanctions.

An attention is paid to the necessity of distinction between a legal entity and the subject of relations. In the author's opinion the latter is a component of a broader concept "the subject of law". The subject of relationships is suggested to be such subject of public life which is able to participate in legal relations as a carrier of legal rights and obligations.

The author suggests the presence of different types of relations, where minors can enter in the same way as adult subjects of law, and special relations that do not recognize a minor as a full legal entity.

Minors in a public space exist as unprotected categories of subjects, because to realize legal status they need their parents' help, tutors or authorized state authorities. The given category of legal subjects need special attention and concern from the state and society, and this must be identified by law. By the way, it is very important to establish not only the rights of minors caused by his/her emotional and psychological state, but also to guarantee the implementation of these rights through the establishment of state measures, legal procedures and organizational procedures: the social services, rehabilitation centers, family centers, specialized educational

and training institutions, great activity of public organizations engaged in ensuring the social situation of minors, the functioning of Ombudsman for Children and other specialized agencies. The focus of legal regulation for minors should be made on securing their physical and mental development, welfare and training of adult for independent existence of a legal entity.

Thus, the author suggests to point out the following features of minors as subjects of law: in the context of the statutory rights, minors enjoy broader rights than adult entities; the scope of subjective duties of minors is narrower than that of general subjects of law, because state, due to their immaturity, lack of complete socialization, experience and knowledge defines this category of persons as those who are able to bear liability on soft categories of offenses, usually heavy and especially hard crimes and established peculiarities of punishment; external isolation as a full subject of legal life and the ability to develop, express and fully execute personified will are not characteristic for minors because of the fact that they exercise this kind of activities not on their own, but through an adult or the state; the presence of differences in the types of relationship, where minors can enter independently together with adult subjects of law and special relationships that do not recognize a minor as a full legal personality; taking into account emotional and mental immaturity this entity requires special attention and care from the state and the society.

**Key words:** minors, children, legal status, legal capacity, rights of minors, obligations of minors.

Geopolitical social changes set alterations into social reality providing for the creation of appropriate conditions for an individual as to the development of his personality, the protection of his needs and legal interests. Modern personality requires from society the opportunities to act and live according to the principles of justice, equality and solidarity. However, only declarative and philosophical approach is not enough here. We need necessary legal instruments and mechanisms for protection of a man and his life, views and preferences, rights and freedoms as valuable categories for the state and the society.

For a long time domestic jurisprudence hasn't recognized the connection between a legal entity and a personality, since the legalistic doctrine paid any role to a human personality as a subject of law. Formally, legalism admits a person as a legal entity, but in fact it exists as an object and finds under the legal influence of the state due to the creation and application of legal norms (rules of law). Legalism doesn't recognize deep connections of law with human personality as a socio-cultural phenomenon, the bearer of human, civil and national dignity, natural rights and freedoms, a creator of rights, his defender, legal personality etc<sup>1</sup>.

Modern jurisprudence considers humanism as one of the most important principles of law, since a civilized society is the basis for the development of a person's rights. The man does not exist as an abstract category within law, but serves as its subject that owns legal status, and according to V. S. Nersesiants a human being is constitutional by nature<sup>2</sup>. A man is a bearer of rights who is capable and enjoys opportunities for its realization.

Anthropological approach overcame legalistic methodology in legal capacity. A man as a living being is endowed with a central role in the social, political and legal relationships and is the foundation and basis of law that functions for ensuring human development and personal dignity. That man is the creator of law and the civil society provides a person not only with protection and defense, but also the ability to take an active part in public administration that involves "postulating the autonomy and individuality of each human being as a basic constitutional value"<sup>3</sup>.

Minors act as subjects of law and their status should be in the center of a legal system in a legal and social state. However, minors are special subjects, so the science needs to research specific features of legal status of this category of children.

The study of the abovementioned problem has two aspects. It is caused by both theoretical and practical reasons. The theoretical significance lies in the study of major categories and provisions of legal status of minors fixed in the legislation of both Ukraine and other countries, and practical interest is

<sup>1</sup> Братасюк, В.М. (2011). Людина-особистість як суб'єкт права: методологічні засади дослідження. *Юридичний часопис Національної академії внутрішніх справ*, 1(1), 64.

<sup>2</sup> Нерсесянц, В.С. (1997). *Філософія права*. Москва, 40.

<sup>3</sup> Тімуш, І.С. (2009). *Інтегральний погляд на право*. Київ: Атіка, 107.

stipulated by the needs of improvement of relevant government and law enforcement agencies and the bodies ensuring the rights of minors.

Everyone in society has social status, depending on many factors, which are usually related to education, financial welfare, political status, etc. "The interaction of man in any field of the environment, especially with the social world cannot consist otherwise than through some of its ideas about the world filling them with some sense and significance. Thus, the essential views on nature of law is that the law itself is seen as a product of social relations, especially relations between socialized individuals, because the fact that a man lives among the people is not his wish or a result that came on the grounds of common benefit: a man by nature - both physical and spiritual – is designed for life in a society, and becomes individual as a result of living in a society. The mode of existing socialized individuals that characterized by conflicting and yet similar interests and cannot be implemented by them independently is social communication (conflict and cooperation) in the form of relationships with one another and all the rest, which acts essentially real, actual source of law"<sup>1</sup>. Human beings living in law cannot exist and develop outside the law and its legal status helps each person to act as legal personality.

The development of modern jurisprudence establishes a new approach to a legal system, recognizing "anthropology" of law to be the newest scientific approach that provides a central, basic human status in law and this fact leads to study the characteristics and properties of people and their influence on law and a state. As it was pointed out by N. Alekseev in the early 20th century the subject owns the role of "the most profound elements of the legal structure"<sup>2</sup>.

Theoretical and legal aspects of legal status of a person are one of the most actual issues developed by modern legal science. With the birth a living being is endowed with legal capacity as the ability to have rights. Therefore, we can state that a person in law has been existed since his birth. Since that moment we are evident of the legal status of a person.

However, the category of legal status is not stable, it develops under the influence of many factors, including the age of a person. It is important from the theoretical point of view and in terms of practical field jurisprudence to study legal status of such categories of persons as minors. It should be noted that we adhere to the position that minors and children are not identical concepts, but are merely an elder age group of children between 14 and 18 years.

Taking into account the definition of S. I. Arkhipova that a legal entity acts as the sum of its legal ties and it is a legal person, its interests, efforts shaped from outside<sup>3</sup>, we suggest to impose these peculiarities on minors. The main feature of them is that they cannot fully exercise legal connections independently. This is due to the lack of full capacity, since they enter important legal relationships not on their own, but through parents or persons who can replace them. Therefore, we can state that the first feature of a minor as an entity is the lack of full capacity.

S. S. Alekseev believes that the subject of law is characterized by two main features. Firstly, this person must be a member of social relations, which may actually be a carrier of subjective legal rights and obligations. It should possess: a) external integrity; b) personified character; c) the ability to produce, reflect and perform personified will.

Speaking about the rights of minors, international standards allocate general and special rules that, for example, are mentioned in the Convention on the Rights of the Child, which strictly fixes the rights of minors that can be divided into the following types: 1. The rights of a minor as a human being; 2. The rights of a minor as a child; 3. Specific rights of minors. So in the context of protecting and securing the rights, minors have the same and perhaps broader rights than adult entities.

Concerning the problem of duty, we cannot put equality between adults and minors since a state and law, in view of their immaturity, lack of complete socialization, experience and knowledge determines the given category of persons as such who are able to take responsibility related to weak categories of offenses, usually heavy and especially hard crimes with specified peculiarities of sanctions - "neither capital punishment nor life imprisonment without the possibility of release should be imposed for offenses committed by persons below 18 years"<sup>4</sup> (p.1. Art. 37 of the Convention on the Rights of the Child).

<sup>1</sup> Цвік, М.В., Петришин, О.В. (заг. ред.) (2008). *Правова система України: історія, стан та перспективи: у 5 т. Т. 1. Методологічні та історико-теоретичні проблеми формування і розвитку правової системи України*. Харків, 97.

<sup>2</sup> Алексеев, Н.Н. (1924). *Основы философии права*. Прага, 76.

<sup>3</sup> Архипов, С.И. (2005). Субъект права в центре правовой системы. *Государство и право*, 7, 13–23.

<sup>4</sup> *Конвенція про права дитини* Генеральна Асамблея ООН (20 листопада 1989).

We should state that two of the three attributes mentioned by scholar such as external isolation and the ability to develop, express and execute personalized will not be fully characteristic of a minor, though such property as personified character of a human being should be endowed from birth. The right to a name, personal inviolability, honor, dignity, is not age-binding. Article 7 of the Convention on the Rights of the Child reads that it "must be registered immediately after birth and since the moment of birth she/ he has the right to a name and nationality, and as far as it is possible, the right to know their parents and their right to care".

Secondly (if we turn to the quotation by S. Alekseev) an entity is a person who is really able to take part in legal relations and acquired properties of an entity through legal norms<sup>1</sup>. A focus should be made on the distinction between a legal entity and subject of relations. We believe that the latter is a part of a broader concept of "legal entity". The subject of relations is such subject of public life, which is able to act as a member of legal relations as a carrier of rights and obligations. As to the identity of the concepts of "legal entity" and "an entity of relationships", they are not always the same: firstly, the relationships is the only form of implementation of the rules of law; secondly, children, mentally ill people who are the subjects of law, cannot be subject to legal relations; thirdly, a particular citizen is always a legal entity, but not always a member of legal relations<sup>2</sup>.

So, the next feature to be assumed is the presence of differences in the types of relationships which minors can enter on their own like adult entities and specific relationships that do not recognize a minor to be a full legal personality. As an example, we refer to the Ukrainian national legislation. Article 32 of the Civil Code of Ukraine states that "an individual under the age of fourteen to eighteen years (a minor) has the right: 1) to dispose of his earnings, scholarships or other income; 2) to exercise the right to the results of his intellectual property, artistic property protected by law; 3) be a member (founder) of legal entities, if it is not prohibited by law or constituent documents of a legal entity; 4) independently conclude contracts of bank deposit (account) and dispose of this deposit (cash account)"<sup>3</sup>. In this case a lawmaker makes a clear legal norm that another minor commits other transactions with the consent of the parents (adoptive parents) or tutors.

Minors in the social space are unprotected categories of workers, because they exercise their legal status with the help of parents, tutors or state authorities. The given category of legal subjects needs special attention and care from the state and the society and these items should be binding in normative acts.

That's why it is important to establish not only the rights of a minor caused by his emotional and psychological development, but guarantees of realization of these rights due to state measures and procedures of legal and organizational character including: the activity of social services, rehabilitation centers, family centers, specialized educational and training institutions, great activity of public organizations engaged in ensuring the social situation of minors, the functioning of Ombudsman for Children and other specialized agencies. The focus of legal regulation for minors should be made on securing their physical and mental development, welfare and training of adult for independent existence of a legal entity.

Modern law should be guided by person's legal relations, his participation in informational culture, postmodern culture; creativity of man, unpredictable, risky character, his cleverness and ability to self-preservation, with a sense of human, civil and national dignity, an independent person who is sympathetic to any violation of his/her rights, injuries, humiliation of dignity, justice, etc.

Regardless of the existing system of national legislative acts related to the problems of minors' protection and a set of international legal norms, we face a number of problems concerning the sufficient level of minor's life, their education, instruction, application of other social benefits. The problem of realization of statutory duties by minors and the features of bringing them to justice appears to be another block for researchers. On the whole, these are general problems of solving minors' status.

Thus, we suggest to single out the following features of minors as subjects of law: lack of full incapacity; in the context of the statutory rights minors enjoy broader rights than adult entities; the scope of subjective duties of minors is narrower than that of general subjects of law since the state, due to their immaturity, lack of complete socialization, experience and knowledge, defines this category of persons as those who are able to bear liability on soft categories of offenses, usually heavy and especially hard crimes and established peculiarities of punishment; external isolation as a full subject of legal life and the ability to

<sup>1</sup> Алексеев, С.С. (2008). *Общая теория права*. Москва, 379.

<sup>2</sup> Цвік, М.В., Петришин, О.В. (2009). *Загальна теорія держави і права*. Харків, 338.

<sup>3</sup> *Цивільний кодекс України 2003. Відомості Верховної Ради України, 40-44, 356.*

develop, express and fully execute personified will are not characteristic of minors because of the fact that they carry out this kind of activities not on their own, but through an adult or the state; the presence of differences in the types of relationships where minors can enter independently together with adult subjects of law and special relationships that do not recognize a minor as a full legal personality; taking into account emotional and mental immaturity this entity require special attention and care from the state and a society.

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